

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ragonese Development Corp. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years 1974 - 1979. :
_____:

AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 25th day of May, 1984, he served the within notice of Decision by certified mail upon Ragonese Development Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ragonese Development Corp.
5100 W. Genesee St.
Camillus, NY 13031

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
25th day of May, 1984.

David Parchuck

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

May 25, 1984

Ragonese Development Corp.
5100 W. Genesee St.
Camillus, NY 13031

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Anthony P. Adorante
Welch, Welch & Carr
P.O. Box 100
Syracuse, NY 13209
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
RAGONESE DEVELOPMENT CORP.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Years 1974	:	
through 1979.	:	

Petitioner, Ragonese Development Corp., 5100 West Genesee Street, Camillus, New York 13031, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1974 through 1979 (File No. 33376).

A formal hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on October 20, 1983 at 9:15 A.M. Petitioner appeared by Anthony P. Adorante, Esq. The Audit Division appeared by John P. Dugan, Esq. (Anne Murphy, Esq., of counsel).

ISSUE

Whether petitioner was subject to corporation franchise tax after it was dissolved by proclamation.

FINDINGS OF FACT

1. Petitioner, Ragonese Development Corp., owned vacant land in Van Buren, New York, near Exit 39 of the New York State Thruway. Its corporate purpose was to develop the land and build a transportation facility.
2. In approximately August, 1972, New York State took petitioner's property through condemnation in order to build an interstate highway. The

remaining land consisted of miscellaneous smaller parcels which petitioner considered not to be suitable for significant commercial development. Immediately following reimbursement by the State for the land, petitioner ceased operations.

3. On December 15, 1973, the Secretary of State dissolved petitioner by proclamation.¹

4. In late spring of 1980, when petitioner was about to sell one of the remaining parcels, it discovered that there were franchise tax liens on the property because title to the land was still in the corporation.

5. On June 15, 1980, petitioner filed New York State corporation tax reports for the years 1974 through 1979 and paid the minimum franchise tax thereon, plus interest, in order to obtain the tax releases necessary to transfer the real property.

6. On October 27, 1980, petitioner, by letter, claimed a refund for the taxes and interest paid amounting to \$1,737.55. The basis for the refund claim was that the corporation had been terminated by proclamation on December 15, 1973 and had conducted no business of any nature thereafter.

7. On December 4, 1980, the Audit Division denied petitioner's refund claim on the grounds that ownership of real property by a dissolved corporation constitutes doing business and that such ownership by petitioner subjected it to tax.

8. The sole assets of petitioner were the parcels of real property.

9. The real property taxes for the years at issue were paid by the corporate officers, Charles Ragonese and Joseph Ragonese.

¹ Section 203-a of the Tax Law authorizes the dissolution by the Secretary of State of business corporations which have not filed reports for any two consecutive years or which have been delinquent in the payment of taxes for any two years duly assessed.

10. At the time the one parcel was sold in 1980, the remaining parcels were transferred by the corporation to the officers.

11. During the years at issue, petitioner carried on no business activity. After the condemnation, it considered the remaining land to have little or no value; it did not actively seek a buyer for the land.

CONCLUSIONS OF LAW

A. That section 209.1 of the Tax Law imposes a tax on every business corporation "(f)or the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or of maintaining an office in this state...".

Section 209.3 of the Tax Law provides, in pertinent part, that a dissolved corporation which continues to conduct business shall also be subject to the tax.

B. That petitioner, albeit dissolved by proclamation, continued to own real property in this state during the years 1974 through 1979 and, therefore, was subject to corporation franchise tax.

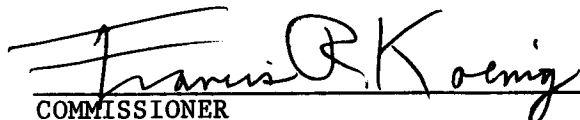
C. That the petition of Ragonese Development Corp. is denied and the refund denial issued December 4, 1980 is sustained.

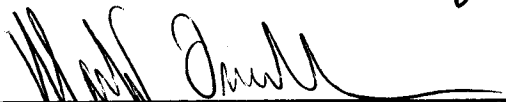
DATED: Albany, New York

STATE TAX COMMISSION

MAY 25 1984


PRESIDENT


COMMISSIONER


COMMISSIONER